Filed 8/4/09 In re J.V. CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re J.V. et al., Persons Coming Under the Juvenile Court Law.	B211908 (Los Angeles County Super. Ct. No. CK70893)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. Y.P., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. Stephen C. Marpet, Juvenile Court Referee. Affirmed in part; reversed in part.

Andrea R. St. Julian, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the County Counsel, James M. Owens, Assistant County Counsel, William D. Thetford, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for Minors.

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This is the second appeal of Y.P. (mother) challenging the juvenile court's jurisdictional findings and disposition with regard to four of her daughters. In our prior unpublished opinion, *In re J.V.*, case No. B205907, filed on October 28, 2008, we reversed the juvenile court's jurisdictional order, which found that the minors were at risk of harm as a result of mother's substance abuse. While that appeal was pending, respondent Los Angeles County Department of Children and Family Services (the department) filed a subsequent petition pursuant to Welfare and Institutions Code[1] section 342 on the basis of new facts and circumstances involving mother's medical neglect of, and failure to make an appropriate plan for, the minors, and the court made jurisdictional and dispositional findings. Mother now appeals from the jurisdiction and disposition order with respect to the subsequent petition. We find no merit to mother's contention that the order is void in light of our prior opinion. We also find the juvenile court had jurisdiction based on three of the four counts in the subsequent petition.

FACTUAL AND PROCEDURAL BACKGROUND

The facts of this case from its inception are well known to the parties, were set forth in detail in our prior opinion and have been incorporated by the department into its brief in this appeal. We therefore will not repeat those facts here, but instead take up where the record in the prior appeal left off. At that time, the court had set a six-month review hearing for July 2008.

In preparation for the hearing, the department reported that the minors, J.V. (age 14), J.V.2 (age 12), S.V. (age 10) and K.V. (age 5), had been residing in mother's home with no reported incidents and were happy and comfortable living with mother. The social worker made several unannounced visits to mother's home in March and April, but no one answered the door and mother's telephone number was sometimes not

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[1] All statutory references shall be to the Welfare and Institutions Code, unless otherwise noted.

in service. A team decision meeting was held on May 20, 2008, during which mother agreed to enroll in a drug program and regularly drug test, but she ultimately failed to do so.

At the July 23, 2008 review hearing, mother told the court that she had not followed through with the drug treatment because she was depressed and sometimes had trouble getting out of bed. She had tested negative for drugs on July 11, 2008. The court ordered mother to return in 30 days to demonstrate that she was in compliance with her drug treatment and receiving mental health care, and warned mother that the minors would be detained if she was not in compliance.

The department subsequently learned that mother had left the two oldest children with the paternal grandmother and the two youngest with the maternal grandmother. Mother told the minors she would be back in a few hours, but she did not return for about three weeks and neither the minors nor their grandmothers could reach mother by telephone. Mother did not leave instructions as to when she would return for the minors. At other times mother would leave the minors with her boyfriend and then disappear for days. Mother was not in regular compliance with her drug treatment. On August 15, 2008, at the department's request, the minors' grandmothers brought them to the department so that they could be detained in foster care while their grandmothers were live scanned. The social worker noticed that the youngest minor had "rotted teeth that were noticeably black in some areas." The minors stated that they had not been to the dentist "in a very long time" and they were afraid to go. They reported that the youngest minor's mouth was sometimes swollen due to infection or lack of care for the cavities in her mouth.

On August 20, 2008, the department filed a subsequent petition under section 342 on behalf of the minors. The petition alleged in counts b-1 and j-1 that K.V., the youngest minor, had cavities that caused swelling and infection, that mother had failed to obtain necessary dental treatment, and that mother's medical neglect of the minor had endangered her and placed her siblings at risk. In counts b-2 and g-1, the petition alleged

that mother had left the minors with their grandmothers without making an appropriate plan for their ongoing care and supervision, which placed them at risk.

At the detention hearing on August 20, 2008, the court ordered the minors detained and allowed them to have an extended visit with the paternal grandmother, who had no criminal record, unlike the maternal grandmother. Mother was permitted monitored visits with the minors and was ordered to comply with her drug treatment.

In its jurisdiction and disposition report, the department reported that K.V. sometimes woke up during the night crying because her teeth hurt and that she did not like brushing her teeth because the toothpaste burned her mouth. Mother claimed that she took K.V. to the dentist about two years earlier, but admitted that she did not follow up as she should have. Mother denied not having a plan for the minors, but admitted "slacking off." The maternal uncle reported having to ask mother several times to sign an affidavit just to take K.V. to the dentist because her teeth were rotten and her mouth would swell from infection. The minors could not remember the last time they went for a medical or dental examination and the department scheduled medical examinations for each of the minors. K.V. had a dental examination on September 12, 2008, which showed that she needed two caps on her front teeth, cavities filled and possibly surgery on her back teeth. She was scheduled for a follow-up appointment the following week. The paternal grandmother stated that mother did not make arrangements with her, and that she took the minors in because she loved them and did not want them out on the streets.

Mother signed a waiver of rights and agreed to the subsequent petition as amended. At the combined jurisdiction and disposition hearing on September 18, 2008, the court sustained the subsequent petition and ordered mother to continue with her drug treatment and weekly drug testing, parent education, individual counseling and Narcotics Anonymous meetings at least four times a week with a sponsor. At the request of the minors' attorney, the court allowed the two youngest minors to have an extended visit with the maternal grandmother, and set the matter for a 12-month review hearing on February 9, 2009. This appeal followed.

DISCUSSION

I. The Jurisdiction and Disposition Order on the Subsequent Petition is Not Void.

Mother contends that in light of our prior opinion reversing the juvenile court's jurisdiction order on the original section 300 petition, the juvenile court lacked jurisdiction to adjudicate the subsequent petition brought under section 342. We disagree.

Section 342 provides in full: "In any case in which a minor has been found to be a person described by Section 300 and the petitioner alleges new facts or circumstances, other than those under which the original petition was sustained, sufficient to state that the minor is a person described in Section 300, the petitioner shall file a subsequent petition. This section does not apply if the jurisdiction of the juvenile court has been terminated prior to the new allegations. [¶] All procedures and hearings required for an original petition are applicable to a subsequent petition filed under this section."

In this case, there was no stay of the matter pending the appeal from the juvenile court's original jurisdiction order, and the subsequent petition and jurisdiction order were made before our prior opinion terminated the juvenile court's original jurisdiction. Thus, section 342 was the appropriate section pursuant to which a new petition should have been filed at that time. Moreover, the statute has built-in safeguards. As section 342 makes clear, a subsequent petition is a new petition, based on new facts and circumstances that require all new hearings and procedures under section 300. The new facts alleged must be sufficient to confer jurisdiction regardless of the facts that conferred jurisdiction earlier. It would have been a simple matter for the department to check off the box on the petition next to section 300, rather than section 342, because the burden on the department to establish the court's jurisdiction remained the same under both statutes. Accordingly, the order on the subsequent petition is not void as a result of our prior opinion reversing the prior jurisdiction and disposition order.

II. Standard of Review.

When the sufficiency of the evidence to support a juvenile court's finding is challenged on appeal, the reviewing court must determine if there is substantial evidence, contradicted or uncontradicted, that supports the finding. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.) "If there is any substantial evidence to support the findings of the juvenile court, a reviewing court must uphold the trial court's findings. All reasonable inferences must be drawn in support of the findings and the record must be viewed in the light most favorable to the juvenile court's order. [Citation.]" (*In re Jeannette S.* (1979) 94 Cal.App.3d 52, 58.) The substantial evidence standard is a difficult hurdle for an appellant or writ petitioner. (*D.M. v. Superior Court* (2009) 173 Cal.App.4th 1117, 1128.) We must uphold the trial court's findings unless it can be said that no rational fact finder could reach the same conclusion. (*In re Athena P.* (2002) 103 Cal.App.4th 617, 629.)

III. Substantial Evidence Supports the Juvenile Court's Jurisdiction.

A. Count b-1

A juvenile court may determine that a child is subject to the court's jurisdiction under section 300, subdivision (b), if it finds by a preponderance of the evidence that "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, . . . or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment . . . ." (§ 300, subd. (b).) The department has the burden of presenting sufficient evidence of the necessity for juvenile court jurisdiction. (*In re Chantal S.* (1996) 13 Cal.4th 196, 210.) Three elements are necessary for a jurisdictional finding under section 300, subdivision (b): "(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) 'serious physical harm or illness' to the minor, or a 'substantial risk' of such harm or illness." (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.) All three elements are present here.

Mother argues that "a child's cavities, without more, simply cannot be a sufficient basis for the taking of juvenile court jurisdiction and disposition." Mother is correct. But here, there was more than mere cavities. The evidence showed that K.V. had visibly decayed teeth that were black in some areas, that her mouth was sometimes swollen due to infection and cavities, that she sometimes woke up during the night crying in pain because her mouth hurt and that she did not like brushing her teeth because the toothpaste burned her mouth. Mother admitted that she had not taken the minor to the dentist for about two years and that she had failed to follow up as she should have. The maternal uncle also reported that he had to ask mother several times for her to sign an affidavit just to take the minor to the dentist.

Mother claims the facts that the department did not schedule the dental examination of K.V. until nearly a month after her detention and that the visit involved a diagnosis rather than treatment indicate that the minor was not suffering serious harm or was not at risk of suffering serious harm. We disagree. The record does not disclose the circumstances regarding the scheduling of the dental examination, and mother ignores that a follow-up visit was scheduled for the following week. As noted above, the evidence clearly showed that K.V. was suffering serious physical pain, and it goes without saying that a child who has visibly rotten teeth is at risk of losing them.

Mother's reliance on *In re Janet T.* (2001) 93 Cal.App.4th 377 is unavailing. There, the mother made a successful facial challenge to the petition's allegations that the minors were at risk of harm because the mother had failed to ensure their school attendance and had "demonstrated numerous mental and emotional problems." (*Id.* at p. 387.) But unlike the petition here, the *Janet T.* petition did not describe any serious physical harm suffered by the minors, and there was no substantial evidence of such harm.

We are satisfied that there was sufficient evidence to support the court's jurisdictional finding in count b-1.

B. Count j-1

The allegations of count j-1 of the subsequent petition were identical to those of count b-1. Section 300, subdivision (j) confers jurisdiction on a juvenile court when "[t]he child's sibling has been abused or neglected, as defined in subdivisions (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions."

Mother argues that the fact that K.V. "had cavities" was not sufficient to establish that her older sisters were at substantial risk of harm. But, again, the evidence showed that K.V. had been suffering from more than mere cavities; she had visibly rotten teeth and mother admitted not having sought dental treatment for her. The maternal uncle had to ask mother several times to sign an affidavit allowing a relative to take her to the dentist. Moreover, none of the minors could remember the last time they had a dental or medical examination. We conclude the evidence was sufficient to support the reasonable inference that mother's failure to seek necessary dental treatment for a child who was in serious physical pain put all of her children at substantial risk of suffering serious harm.

C. Count b-2

Count b-2 alleged that mother had failed to make an appropriate arrangement for the minors' ongoing care and supervision. Mother contends that substantial evidence does not support dependency jurisdiction based upon count b-2 because she left the minors with relatives who were willing to, and did, appropriately care for them. But mother ignores that when she left the minors with their grandmothers, she did not return for weeks despite telling them she would return within a few hours. Mother left no instructions as to when she would return for the minors. She did not remain in contact with the minors or their grandmothers, who were unable to reach her. The maternal uncle had to make several requests of mother to get authority to take K.V. to a dentist, while the minor suffered serious physical pain in the meantime. In short, mother essentially abandoned the minors and her parental responsibilities and failed to make any arrangements for the minors' dental and medical care and ongoing care and supervision.

We conclude the evidence was sufficient to support the court's jurisdiction under count b-2.

D. Count g-1

Section 300, subdivision (g) confers a juvenile court with jurisdiction in four instances: "The child has been left without any provision for support; physical custody of the child has been voluntarily surrendered pursuant to Section 1255.7 of the Health and Safety Code and the child has not been reclaimed within the 14-day period specified in subdivision (e) of that section; the child's parent has been incarcerated or institutionalized and cannot arrange for the care of the child; or a relative or other adult custodian with whom the child resides or has been left is unwilling or unable to provide care or support for the child, the whereabouts of the parent are unknown, and reasonable efforts to locate the parent have been unsuccessful." We agree with mother that the juvenile court lacked jurisdiction under count g-1.

Count g-1 of the subsequent petition alleged that mother had failed to make an appropriate plan for the minors' ongoing care and supervision. But under the statute, that factor applies only when the parent has been incarcerated or institutionalized, which was not the situation here. The subsequent petition did not allege that the minors were left without any provision for support, that is, that the grandmothers were not supporting the minors. Nor was there evidence that the minors' relatives were not supporting them. The department relies on *In re Athena P., supra,* 103 Cal.App.4th at page 630, but that case is distinguishable. There, the mother was incarcerated and sentenced to three years in prison. The reviewing court held that substantial evidence supported the finding that the mother was unable to arrange for a child's care under section 300, subdivision (g), because the caregivers had no authority to consent to medical treatment or enroll the child in school. (*In re Athena P., supra,* at p. 630.) Here, mother was not incarcerated or institutionalized. And the other two statutory bases for jurisdiction were not applicable.

Our conclusion that count g-1 is unsupported does not affect the juvenile court's jurisdiction, since the court's jurisdiction may rest on a single ground. (§ 300 ["Any

child who comes within *any* of the following descriptions is within the jurisdiction of the juvenile court . . . ." (italics added)]; see *D.M. v. Superior Court, supra,* 173 Cal.App.4th at pp. 1127–1128; *In re Janet T., supra,* 93 Cal.App.4th at p. 389; *In re Shelley J.* (1998) 68 Cal.App.4th 322, 330; see generally *In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875 ["reviewing court may affirm [dependency jurisdiction] if the evidence supports the decision on any one of several grounds"].)

IV. The Disposition Order is Affirmed.

Mother contends that because the juvenile court does not have jurisdiction over the minors with respect to the subsequent petition, the court's disposition order on the subsequent petition must also be reversed. But we have concluded that the juvenile court does have jurisdiction. Because mother does not make any other arguments challenging the disposition order, we affirm it.

DISPOSITION

We reverse the order with respect to count g-1, and direct the juvenile court to dismiss count g-1 from the subsequent petition. In all other respects the order is affirmed.

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_____, Acting P. J.

DOI TODD

We concur:

_____, J.

ASHMANN-GERST

_____, J.

CHAVEZ